



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Connally McKay  
County Attorney  
Wood County  
Quitman, Texas

Dear Sir:

Opinion No. 0-5098

Re: Under the facts submitted can the county clerk of Wood County retain his office after he is inducted into the Army and receive his salary as county clerk?

Your letter of recent date submitting the above stated question for the opinion of this department is as follows:

"The County Clerk of Wood County, Texas, is about to be inducted into the army. The County Clerk in this county employs several deputy clerks who perform the various duties in that office. Wood County operates under the Officer's Salary Law, and the County Clerk receives a salary only for his compensation.

"The question is: Can the County Clerk of this county retain his civil office after he is inducted into the army? If so, is he entitled to his salary as County Clerk?

"Sec. 33 and Sec. 40, Art. 16, Constitution of Texas, provide that no person shall hold or exercise at the same time more than one office of emolument, except that of Justice of the Peace, County Commissioner, Notary Public and Postmaster, etc., including certain reserves in the Army, Navy, Marines, and retired personnel of the Army, Navy and Marines. It is assumed the County Clerk will enter the Army through Selective Service, and

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therefore, the question is would he be an officer exempt under the Constitution from holding his civil office and being in the army. *Carpenter vs. Sheppard*, 145 SW(2) 562, does not seem to be applicable to this situation, but the recent decision of the Supreme Court in the case of *Cramer vs. Sheppard* probably is in point. I do not have this case as yet.

"With several deputies in the office the County Clerk could perform the duties of the office through and by them.

"It seems that if Judge Dixon in the *Cramer* case is a reserve officer in the Army of the United States, then it might also be true that a selectee is a reserve enlisted man, as I understand, to serve for the duration plus six months. Further, it seems that under Title 94, Militia, every able bodied male in Texas is in the Reserve Militia.

"Please let me have an opinion from your department concerning these questions."

It is not specifically stated whether or not the county clerk is being inducted into the military service of the United States as a private or a commissioned officer. However, in the absence of any facts to the contrary we assume that the county clerk is being inducted into the Army as a private.

Heretofore this department has rendered several opinions on questions very similar to the one presented in your inquiry. In our opinion No. O-5017 it was held "that a person who was duly elected county clerk and has since been inducted into the military service of the United States as a private is entitled to qualify by filing the required oath and bond".

In our opinion No. O-4873 it was held "that no provision of the Texas Constitution or statutes prevents the private in the United States Army from being a candidate for election to the office of county assessor-collector of taxes. If such person be elected to that office, the fact alone that he is a private in the United States Army will not disqualify him to take and hold the office and receive the compensation attached thereto.. See opinion No. O-3448, referred to above."

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In view of the foregoing, you are respectfully advised that it is our opinion that the fact alone that the county clerk is a private in the United States Army will not disqualify him to hold such office and receive the compensation attached thereto.

In support of our answer to your question we direct your attention to the following opinions Nos. 0-3448, 0-4465, 0-5017, 0-4873 and 0-4599, copies of these opinions being enclosed herewith.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED FEB 19, 1943

*George Sullivan*  
FIRST ASSISTANT  
ATTORNEY GENERAL

By

*Ardell Williams*  
Ardell Williams  
Assistant

AW:mp  
Encl.

